IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1701 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHANNO @ CHHAGANBHAI BABERIYA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/05/2000

ORAL JUDGEMENT

#. The petitioner - Bhanno @ Mehji Chhaganbhai Baberiya, has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Ahmedabad City, Ahmedabad, in

exercise of powers under Section 3(1) of the PASA Act, dated January 29, 2000.

#. The grounds of detention indicate that the detaining authority took into consideration five offences registered against the petitioner. The detaining authority also took into consideration the statements of two anonymous witnesses and came to conclusion that the petitioner is a "dangerous person" that his activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses. The detaining authority considered the possibility of resorting to externment under section 56/57 of the Bombay Police Act while considering the less drastic remedy. The authority observed that after getting bailed out, the petitioner may engage himself in such illegal anti-social activities.

#. The petitioner has challenged this order of detention on various counts. However, Ms. Subhadra Patel, learned advocate for the petitioner has restricted his arguments to the fact that the detaining authority has passed order of detention while the detenue was in judicial custody and no compelling reasons are shown for passing such order. The subjective satisfaction for immediately detaining the petitioner is, therefore, not genuine. He submitted further that the order is based on extraneous and irrelevant considerations namely, consideration of section 57 of the Bombay Police Act wherein minimum three convictions under the Bombay Prohibition Act are required for externing the petitioner which are non-existent. She, therefore, submitted that therefore, there was no scope for the detenue to pursue his alleged illegal activity immediately.

#. So far as the statements of witnesses are concerned, it is contended that they have been verified on 29th January, 2000 and on that very day, the order is passed. The exercise of powers under Section 9(2) of the PASA Act is improper and has resulted into denial of right of making an effective representation as contemplated under Article 22 (5) of the Constitution. Learned counsel for the petitioner therefore, submitted that, in light of the decision of a Division Bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat & Ors. 1993 (2) GLR 1659, this petition may be allowed.

#. Mr. K.T.Dave, learned AGP has opposed this petition.

#. Having regard to the rival side contentions, close reading of the grounds of detention indicates that the detaining authority was aware about the fact that the detenue is in judicial custody in respect of all the cases. The detaining authority has not assigned any reasons leave aside the compelling reasons for passing the order of detention while the detenue was in judicial custody and there was, as such, no scope for him to pursue his alleged illegal and anti-social activities immediately. The order of detention, therefore, is bad in law as held in the case of Sanjeev Kumar Aggarwal v. Union of India, AIR 1990 SC 1202. The order cannot be supported also for the reason that the detaining authority has taken into consideration the possibility of resorting to proceedings under section 57 of the Bombay Police Act and there are five offences registered against the detenue, three of which are pending investigation and rest two are pending trial. There is no allegation that there were earlier convictions of the detenue. Under the circumstances, in the absence of any convictions, there was no question of considering the possibility of resorting to proceedings under section 57 of the Bombay Police Act. Consideration of this provision by the detaining authority indicates that the authority has considered relevant and extraneous material reflecting non-application of mind which would vitiate the order of detention. In this regard, the decision in the case of Bhupatbhai R. Vasava v. District Magistrate, Bharuch, 1992 (2) GLH 350 can be profitably be used. Therefore, the petition deserves to be allowed.

#. As regards the statements of anonymous witnesses, verification of anonymous statements is of the same day. It is clear from the grounds of detention that the detaining authority has taken into consideration the statements of two anonymous witnesses. The authority came to a conclusion that the fear expressed by these witnesses is correct and genuine and, therefore, the authority exercised powers under Section 9(2) of the PASA Act by not disclosing the identity of the witnesses. This Court is at loss to appreciate how the detaining authority could have arrived at this conclusion in such short spell. The detaining authority has not filed any affidavit-in-reply. It is, therefore, not possible to know as to what were the factors and material considered by the detaining authority besides the statements of the anonymous witnesses to come to conclusion that the fear expressed by the witnesses was genuine, that the incidents stated by the witnesses were correct and that there was need for exercise of powers under Section 9(2)

of the PASA Act.

#. Similar such situation arose before a Division Bench of this Court in the case of Kalidas Chandubhai Kahar (supra), where the statements were verified on 16th October, 1992 and the order was passed on 17th October, 1992 and the Division Bench said that exercise of powers under Section 9(2) of the PASA Act was improper. This improper exercise of powers under Section 9(2) of the PASA Act was held to be detrimental to the right of the detenue of making an effective representation contemplated under Article 22(5) of the Constitution. The order of detention was, therefore, quashed. The facts of the present case squarely fall in line with the facts of that case. The order of detention, therefore stands vitiated in the instant case as well and the petition deserves to be allowed.

#. In view of the aforesaid discussion, the petition is allowed. The impugned order of detention dated January 29, 2000, is hereby quashed and set aside. The detenue - Bhanno @ Mehji Chhaganbhai Baberiya, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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